

KANSAS MEDICAID STATE PLAN

Attachment 4.19-D

ADMINISTRATIVE PROCEDURE ACT

77-535

Part 1

Subpart R

Exhibit R-1

Page 16

and the notice or order is served by mail, three days shall be added to the prescribed period.

History: L. 1984, ch. 313, § 31; July 1, 1985.

Research and Practice Aids:

Administrative Law and Procedure — 503 et seq.

C.J.S. Public Administrative Law and Procedure § 152.

77-532. Record. (a) A state agency shall maintain an official record of each formal hearing.

(b) The state agency record consists only of:

- (1) Notices of all proceedings;
- (2) any prehearing order;
- (3) any motions, pleadings, briefs, petitions, requests, and intermediate rulings;
- (4) evidence received or considered;
- (5) a statement of matters officially noticed;
- (6) proffers of proof and objections and rulings thereon;

(7) proposed findings, requested orders and exceptions;

(8) the record prepared for the presiding officer at the hearing, together with any transcript of all or part of the hearing considered before final disposition of the proceeding;

(9) any final order, initial order, or order on reconsideration; and

(10) staff memoranda or data submitted to the presiding officer.

(c) Except to the extent that this act or another statute provides otherwise, the state agency record, excluding matters under paragraph (10) of subsection (b), constitutes the exclusive basis for state agency action in formal hearings and for judicial review thereof.

History: L. 1984, ch. 313, § 32; L. 1988, ch. 356, § 17; July 1, 1989.

Research and Practice Aids:

Administrative Law and Procedure — 506.

C.J.S. Public Administrative Law and Procedure § 160.

CONFERENCE HEARING

77-533. Conference hearing; use, when. A conference hearing may be used if its use in the circumstances does not violate any provision of law and where there is:

(a) A matter in which there is no disputed issue of material fact; or

(b) a matter in which there is a disputed issue of material fact and the parties agree to a conference hearing.

History: L. 1984, ch. 313, § 33; L. 1988, ch. 356, § 18; July 1, 1989.

Research and Practice Aids:

Administrative Law and Procedure — 472.

C.J.S. Public Administrative Law and Procedure §§ 136, 139.

Law Review and Bar Journal References:

"The New Kansas Administrative Procedure and Judicial Review Acts," David L. Ryan, 54 J.K.B.A. 53, 57, 62 (1985).

"Challenging and Defending Agency Actions in Kansas," Steve Leben, 64 J.K.B.A. No. 5, 22, 23 (1995).

77-534. Procedure. The procedures of this act pertaining to formal hearings apply to a conference hearing, except to the following extent:

(a) If a matter is initiated as a conference hearing, no prehearing conference may be held.

(b) The provisions of K.S.A. 77-522 and amendments thereto do not apply to conference hearings insofar as those provisions authorize the issuance and enforcement of subpoenas and discovery orders, but do apply to conference hearings insofar as those provisions authorize the presiding officer to issue protective orders at the request of any party or upon the presiding officer's motion.

(c) Paragraphs (a), (b) and (c) of K.S.A. 77-523 and amendments thereto do not apply; but (1) the presiding officer shall regulate the course of the proceedings; (2) only the parties may testify and present written exhibits; and (3) the parties may offer comments on the issues.

History: L. 1984, ch. 313, § 34; L. 1988, ch. 356, § 19; July 1, 1989.

77-535. Disclosure of material or essential facts. (a) If during a conference hearing the presiding officer has reason to believe that material facts are in dispute, the presiding officer may require any party to state the identity of the witnesses or other sources through whom the party would propose to present proof if the proceeding were converted to a formal hearing, but if disclosure of any fact, allegation or source is privileged or expressly prohibited by any provision of law, the presiding officer may require the party to indicate that confidential facts, allegations or sources are involved, but not to disclose the confidential facts, allegations or sources.

(b) If during a conference hearing a party has reason to believe that essential facts must be obtained in order to permit an adequate presentation of the case, the party may inform the presiding officer regarding the general nature of the facts and the sources from whom the party would

KANSAS MEDICAID STATE PLAN

Attachment 4.19-D

77-536 STATUTES; ADMIN. RULES AND REGULATIONS; PROCEDURE

Part 1
Subpart R
Exhibit R-1
Page 17

propose to obtain those facts if the proceeding were converted to a formal hearing.

History: L. 1984, ch. 313, § 35; L. 1988, ch. 356, § 20; July 1, 1989.

EMERGENCY PROCEEDINGS

77-536. Emergency proceedings; use, when; procedure. (a) A state agency may use emergency proceedings: (1) In a situation involving an immediate danger to the public health, safety or welfare requiring immediate state agency action or (2) as otherwise provided by law.

(b) The state agency may take only such action as is necessary: (1) To prevent or avoid the immediate danger to the public health, safety or welfare that justifies use of emergency adjudication or (2) to remedy a situation for which use of emergency adjudication is otherwise provided by law.

(c) The state agency shall render an order, including a brief statement of findings of fact, conclusions of law and policy reasons for the decision if it is an exercise of the state agency's discretion, justify the state agency's decision to take the specific action and the determination of: (1) An immediate danger or (2) the existence of a situation for which use of emergency adjudication is otherwise provided by law.

(d) The state agency shall give such notice as is practicable to persons who are required to comply with the order. The order is effective when rendered. Notice under this subsection shall constitute service for the purposes of the act for judicial review and civil enforcement of agency actions.

(e) After issuing an order pursuant to this section, the state agency shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not justify the use of emergency proceedings under subsection (a).

(f) The state agency record consists of any documents regarding the matter that were considered or prepared by the state agency. The state agency shall maintain these documents as its official record.

(g) Unless otherwise required by a provision of law, the state agency record need not constitute the exclusive basis for state agency action in emergency proceedings or for judicial review thereof.

History: L. 1984, ch. 313, § 36; L. 1988, ch. 356, § 21; July 1, 1989.

Research and Practice Aids:

Administrative Law and Procedure ¶ 470.

C.J.S. Public Administrative Law and Procedure § 134.

Law Review and Bar Journal References:

"The New Kansas Administrative Procedure and Judicial Review Acts," David L. Ryan, 54 J.K.B.A. 53, 57, 62 (1985).

"Challenging and Defending Agency Actions in Kansas," Steve Leben, 64 J.K.B.A. No. 5, 22, 23, 25 (1995).

CASE ANNOTATIONS

1. Whether defendants misused emergency proceedings provisions of KAPA in administrative license suspension action examined. *Lindenman v. Umscheid*, 255 K. 610, 613, 620, 875 P.2d 964 (1994).

2. Whether the denial of hearing on emergency suspension until doctor submitted to mental evaluation violated due process examined. *Corder v. Kansas Board of Healing Arts*, 256 K. 638, 648, 889 P.2d 1127 (1994).

SUMMARY PROCEEDINGS

77-537. Summary proceedings; use, when; right to request hearing; orders, contents. (a) A state agency may use summary proceedings, subject to a party's request for a hearing on the order, if:

(1) The use of those proceedings in the circumstances does not violate any provision of law; and

(2) the protection of the public interest does not require the state agency to give notice and an opportunity to participate to persons other than the parties.

(b) The state agency shall serve each party with a copy of the order in a summary proceeding in the manner prescribed by K.S.A. 77-531, and amendments thereto. The order shall include at least:

(1) A statement of the state agency's action and, if unfavorable action is taken, a brief statement of the reasons for the action;

(2) notice of the time and manner for requesting a hearing on the order, as provided in K.S.A. 77-542; and

(3) notice that, if a hearing is not requested, the order shall become effective upon the expiration of the time for requesting a hearing.

History: L. 1984, ch. 313, § 37; L. 1988, ch. 356, § 22; L. 1989, ch. 283, § 6; L. 1990, ch. 340, § 1; July 1.

Research and Practice Aids:

Administrative Law and Procedure ¶ 470.

C.J.S. Public Administrative Law and Procedure § 134.

Law Review and Bar Journal References:

"The New Kansas Administrative Procedure and Judicial Review Acts," David L. Ryan, 54 J.K.B.A. 53, 57, 63 (1985).

"Challenging and Defending Agency Actions in Kansas," Steve Leben, 64 J.K.B.A. No. 5, 22, 23 (1995).

KANSAS MEDICAID STATE PLAN

Attachment 4.19-D

Part I

Subpart R

Exhibit R-1

Page 18

ADMINISTRATIVE PROCEDURE ACT

77-546

77-538 to 77-540.

History: L. 1984, ch. 313, §§ 38 to 40; L. 1988, ch. 356, §§ 23 to 25; Repealed, L. 1989, ch. 283, § 26; July 1.

77-541. Same; record. (a) The state agency record for a summary proceeding consists of any documents regarding the matter that were considered or prepared by the state agency. The state agency shall maintain these documents as its official record.

(b) Unless otherwise required by a provision of law, the agency record need not constitute the exclusive basis for agency action in summary proceedings or for judicial review thereof.

History: L. 1984, ch. 313, § 41; L. 1988, ch. 356, § 26; L. 1989, ch. 283, § 7; July 1.

Research and Practice Aids:

Administrative Law and Procedure ¶ 506.

C.J.S. Public Administrative Law and Procedure § 160.

77-542. Right to request hearing; statement filed. (a) Any notice of agency action resulting in a right to request a hearing pursuant to the Kansas administrative procedure act must include a statement informing the person that a written request for a hearing must be filed with the agency within 15 days of service of the notice.

(b) The time limit for requesting a hearing established by subsection (a) may be lengthened or shortened as otherwise provided by state or federal law.

History: L. 1990, ch. 340, § 2; July 1.

77-543, 77-544. Reserved.

77-545. State corporation commission; adjudicative proceedings; ex parte communications; file and docket, contents; technical staff, not party to proceedings. (a) This section applies to adjudicative proceedings before the state corporation commission.

(b) (1) After the commission has determined and announced that a hearing should be held, and prior to the issuance of a final order, no parties to the proceeding, or their counsel, shall discuss the merits of the matter or proceeding with the presiding officer unless reasonable notice is given to all parties who have appeared to enable the parties to be present at the conference.

(2) After the commission has determined and announced that a hearing should be held, prior to the issuance of a final order, copies of any written communications from any party regarding the proceeding that are directed to the presiding of-

ficer shall be mailed to all parties of record and proof of service shall be furnished to the commission. Communications requested by members of the commission staff from any party and any written communications received by members of the commission staff from any party shall be made a part of the file and the docket and shall be made available to all persons who desire to use them, provided that all commission requests for information from a party shall be mailed to all parties of record.

(3) The person or persons to whom any ex parte communication has been made shall promptly and fully inform the full commission of the substance of the communication, and the circumstances thereof, to enable the commission to take appropriate action.

(c) For purposes of this section, no member of the technical staff shall be considered a party to any proceeding before the commission, regardless of participation in staff investigations with respect to the proceeding or of participation in the proceeding as a witness. Since the purpose of the staff is to aid the commission in the proper discharge of commission duties, the presiding officers shall be free at all times to confer with any staff member with respect to any proceeding. However, no facts that are outside the record, and that reasonably could be expected to influence the decision in any matter pending before the commission, shall be furnished to any presiding officer unless all parties to the proceeding are likewise informed and afforded a reasonable opportunity to respond. Subsection (b) shall apply to staff counsel in regard to any adjudicatory proceeding before the commission.

(d) All letters and written communications that are received by the presiding officer from members of the general public, and that are in the nature of ex parte communications, shall be made a part of the file in the docket and shall be made available to all persons who desire to see them. The deposit of such written communications and letters in the file shall not make them a part of the official record of the case.

History: L. 1988, ch. 356, § 355; July 1, 1989.

77-546. Commissioner of insurance; adjudicative proceedings; ex parte communications; file and docket, contents; technical staff, not party to proceedings. (a) This section applies to adjudicative proceedings before the commissioner of insurance concerning any rate,

JUN 9 1999

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KANSAS MEDICAID STATE PLAN

1-547

STATUTES; ADMIN. RULES AND REGULATIONS; PROCEDURE

Attachment 4.19-D

Part 1

Subpart R
Exhibit R-1

Page 19

or any rule, regulation or practice pertaining to the rates over which the commissioner has jurisdiction and adjudicative proceedings held pursuant to the Kansas insurance holding companies act.

(b) (1) After the commissioner has determined and announced that a hearing should be held, and prior to the issuance of a final order, no parties to the proceeding, or their counsel, shall discuss the merits of the matter or proceeding with the presiding officer unless reasonable notice is given to all parties who have appeared to enable the parties to be present at the conference.

(2) After the commissioner has determined and announced that a hearing should be held, prior to the issuance of a final order, copies of any written communications from any party regarding the proceeding that are directed to the presiding officer shall be mailed to all parties of record and proof of service shall be furnished to the commissioner. Communications requested by the commissioner's staff from any party and any written communication received by the commissioner's staff from any party shall be made a part of the file and the docket and shall be made available to persons who desire to use them, provided that the commissioner's requests for information from a party shall be mailed to all parties of record.

(3) The person or persons to whom any *ex parte* communication has been made shall promptly and fully inform the commissioner of the substance of the communication, and the circumstances thereof, to enable the commissioner to take appropriate action.

(c) For purposes of this section, no member of the commissioner's technical staff shall be considered a party to any proceeding before the commissioner, regardless of participation in staff investigations with respect to the proceeding or of participation in the proceeding as a witness. Since the purpose of the staff is to aid the commissioner in the proper discharge of the commissioner's duties, the presiding officer shall be free at all times to confer with any staff member with respect to any proceeding. However, no facts that are outside the record, and that reasonably could be expected to influence the decision in any matter pending before the commissioner, shall be furnished to any presiding officer unless all parties to the proceeding are likewise informed and afforded a reasonable opportunity to respond. Subsection (b) shall apply to staff counsel who have participated in the proceeding in regard to any

adjudicatory proceeding before the commissioner.

(d) All letters and written communications that are received by the presiding officer from members of the general public, and that are in the nature of *ex parte* communications, shall be made a part of the file in the docket and shall be made available to all persons who desire to see them. The deposit of such written communications and letters in the file shall not make them a part of the official record of the case.

History: L. 1988, ch. 356, § 356; July 1, 1989.

77-547. Same; administrative proceedings; agency head, defined. For purposes of administrative proceedings of the insurance department under the Kansas administrative procedure act, "agency head" means the commissioner of insurance or the assistant commissioner of insurance, when acting on behalf of the commissioner.

History: L. 1988, ch. 356, § 358; July 1, 1989.

77-548. Director of taxation; adjudicative proceedings; ex parte communications; file and docket, contents; technical staff, not party to proceedings. (a) This section applies to adjudicative proceedings before the director of taxation. Informal conferences held pursuant to K.S.A. 79-3226, and amendments thereto, shall not be deemed to be adjudicative proceedings for the purposes of this act.

(b) (1) After the director has determined and announced that a hearing should be held, and prior to the issuance of a final order, no parties to the proceeding, or their counsel, shall discuss the merits of the matter or proceeding with the presiding officer unless reasonable notice is given to all parties who have appeared to enable the parties to be present at the conference.

(2) After the director has determined and announced that a hearing should be held, prior to the issuance of a final order, copies of any written communications from any party regarding the proceeding that are directed to the presiding officer shall be mailed to all parties of record and proof of service shall be furnished to the director. Communications requested by the director's staff from any party and any written communication received by the director's staff from any party shall be made a part of the file and the docket and shall be made available to all persons who desire to use them, provided that the director's requests for information from a party shall be mailed to all parties of record.

KANSAS MEDICAID STATE PLAN

Attachment 4.19-D

ACT FOR JUDICIAL REVIEW AND CIVIL ENFORCEMENT OF AGENCY ACTIONS 77-551

Part 1
Subpart R
Exhibit R-1
Page 20

(3) The person or persons to whom any *ex parte* communication has been made shall promptly and fully inform the director of the substance of the communication, and the circumstances thereof, to enable the director of any division within the department to take appropriate action.

(c) For purposes of this section, no member of the director's technical staff shall be considered a party to any proceeding before the director, regardless of participation in staff investigations with respect to the proceeding or of participation in the proceeding as a witness. Since the purpose of the staff is to aid the director in the proper discharge of the director's duties, the presiding officer shall be free at all times to confer with any staff member with respect to any proceeding. However, no facts that are outside the record, and that reasonably could be expected to influence the decision in any matter pending before the director, shall be furnished to any presiding officer unless all parties to the proceeding are likewise informed and afforded a reasonable opportunity to respond. Subsection (b) shall apply to staff counsel who have participated in the proceeding in regard to any adjudicatory proceeding before the director.

(d) All letters and written communications that are received by the presiding officer from members of the general public, and that are in the nature of *ex parte* communications, shall be made a part of the file in the docket and shall be made available to all persons who desire to see them. The deposit of such written communications and letters in the file shall not make them a part of the official record of the case.

History: L. 1988, ch. 356, § 357; L. 1997, ch. 126, § 6; July 1.

77-549. Same; application for an order; when proceedings required; agency head defined; final orders. (a) The filing of a return with the director of taxation under article 15, 32, 33, 34, 36, 37, 41, 42 or 47 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, shall not be deemed an application for an order under the Kansas administrative procedure act.

(b) A determination by the division of taxation or the audit services bureau of the department of revenue concerning tax liability under article 15, 32, 33, 34, 36, 37, 41, 42 or 47 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, which is made prior to the opportunity for a hearing or prior to the opportunity for an

informal conference before the secretary or the secretary's designee on such tax liability, shall not require an adjudicative proceeding under the Kansas administrative procedure act.

(c) For purposes of the Kansas administrative procedure act, the secretary of revenue may designate the director of the division of taxation or other designee as agency head.

(d) Final orders of the director of taxation pursuant to K.S.A. 77-526, and amendments thereto, shall be rendered in writing and served within 120 days after conclusion of the hearing or after submission of proposed findings in accordance with subsection (f) of K.S.A. 77-526, and amendments thereto, unless this period is waived or extended with the written consent of all parties or for good cause shown. If extended for good cause, such good cause shall be set forth in writing on or before the expiration of the 120 days.

History: L. 1988, ch. 356, § 359; L. 1995, ch. 175, § 8; L. 1997, ch. 126, § 7; July 1.

77-550. Division of property valuation; administrative proceedings; agency head, defined. For purposes of administrative proceedings of the division of property valuation under the Kansas administrative procedure act, the secretary of revenue may designate the director of the division of property valuation or other designee as agency head.

History: L. 1994, ch. 139, § 1; L. 1997, ch. 126, § 8; July 1.

77-551. SRS hearings. On and after July 1, 1998: (a) In hearings of the department of social and rehabilitation services under K.S.A. 39-1807, 65-4015, 65-4606, 65-4927, 75-3306 and 75-3340, and amendments thereto, the presiding officer shall be the agency head, one or more members of the agency head or an administrative law judge assigned by the office of administrative hearings.

(b) This section shall be part of and supplemental to the Kansas administrative procedure act.

History: L. 1997, ch. 182, § 90; July 3.

Cross References to Related Sections:

Office of administrative hearings, see 75-37, 121 and 75-37, 122.

Article 6.—ACT FOR JUDICIAL REVIEW AND CIVIL ENFORCEMENT OF AGENCY ACTIONS

Law Review and Bar Journal References:

"Administrative Law: The Creation of a Presumption of Unreviewability in Cases of Administrative Inaction [Heckler v.

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KANSAS MEDICAID STATE PLAN

Attachment 4.19-D

77-502 STATUTES; ADMIN. RULES AND REGULATIONS; PROCEDURE 1998 Supp

Part 1
Subpart R
Exhibit R-1
Page 21

Article 5.—ADMINISTRATIVE PROCEDURE ACT

77-502.

Attorney General's Opinions:

*An authority organized pursuant to 12-2901 et seq. is not a municipality. 97-42.

77-514. Presiding officer. (a) The agency head, one or more members of the agency head, an administrative law judge assigned by the office of administrative hearings, or, unless prohibited by K.S.A. 77-551, and amendments thereto, one or more other persons designated by the agency head may be the presiding officer.

(b) Any person serving or designated to serve alone or with others as presiding officer is subject to disqualification for administrative bias, prejudice or interest.

(c) Any party may petition for the disqualification of a person promptly after receipt of notice indicating that the person will preside or promptly upon discovering facts establishing grounds for disqualification, whichever is later.

(d) A person whose disqualification is requested shall determine whether to grant the petition, stating facts and reasons for the determination.

(e) If a substitute is required for a person who is disqualified or becomes unavailable for any other reason, any action taken by a duly appointed substitute for a disqualified or unavailable person is as effective as if taken by the latter.

(f) If the office of administrative hearings cannot provide a presiding officer, a state agency may enter into agreements with another state agency to provide presiding officers to conduct proceedings under this act.

(g) Notwithstanding any quorum requirements, if the agency head of a professional or occupational licensing agency is a body of individuals, the agency head, unless prohibited by law, may designate one or more members of the agency head to serve as presiding officer and to render a final order in the proceeding.

History: L. 1984, ch. 313, § 14; L. 1995, ch. 175, § 2; L. 1997, ch. 182, § 92; July 1, 1998.

77-518. Notice of hearing. (a) The presiding officer for the hearing shall set the time and place of the hearing and give reasonable written notice at least 10 days prior to the hearing to all parties and to all persons who have filed written motions to intervene in the matter. Service of no-

tices shall be made in accordance with K.S.A. 77-531 and amendments thereto.

(b) The notice shall include a copy of any prehearing order rendered in the matter.

(c) To the extent not included in a prehearing order accompanying it, the notice shall include:

(1) The names and mailing addresses of all parties and other persons to whom notice is being given by the presiding officer;

(2) the name, official title, mailing address and telephone number of any counsel or employee who has been designated to appear for the state agency;

(3) the official file or other reference number, the name of the proceeding and a general description of the subject matter;

(4) a statement of the time, place and nature of the hearing;

(5) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(6) the name, official title, mailing address and telephone number of the presiding officer;

(7) a statement of the issues involved and, to the extent known to the presiding officer, of the matters asserted by the parties; and

(8) a statement that a party who fails to attend or participate in a prehearing conference, hearing or other stage of an adjudicative proceeding may be held in default under this act.

(d) The notice may include any other matters the presiding officer considers desirable to expedite the proceedings.

(e) The state agency shall cause notice to be given to persons entitled to notice under any provision of law who have not been given notice under subsection (a) by the presiding officer. Notice under this subsection shall be given in the manner specified by such provision of law or, if no such manner is specified, in a manner to be determined by the agency. If a person other than the agency is directed to give notice under this subsection, the agency shall require that the person furnish proof that the notice has been given. Notice under this subsection may include all types of information provided in subsections (a) through (d) or may consist of a brief statement indicating the subject matter, parties, time, place and nature of the hearing, manner in which copies of the notice to the parties may be inspected and copied and name and telephone number of the presiding officer.

History: L. 1984, ch. 313, § 18; L. 1988, ch. 356, § 8; L. 1997, ch. 182, § 93; July 1, 1998.

KANSAS MEDICAID STATE PLAN

Attachment 4.19-D

Part 1

Subpart R

Exhibit R-1

Page 22

ADMINISTRATIVE PROCEDURE ACT 1998 Supp. 77-527

CASE ANNOTATIONS

2. Not necessary to furnish additional notice following amendment of rate application where description of proceeding did not become misleading. *Farmland Industries, Inc. v. Kansas Corporation Comm'n*, 24 K.A.2d 172, 174, 943 P.2d 470 (1997).

77-522.

Attorney General's Opinions:

Application of open meetings act and administrative procedure act to proceedings for determination of benefits of KPERS member before hearing officer and board of trustees. 97-40.

Open public records; board of accountancy; correspondence. 97-76.

77-523.

Attorney General's Opinions:

Application of open meetings act and administrative procedure act to proceedings for determination of benefits of KPERS member before hearing officer and board of trustees. 97-40.

77-527. Review of initial order; exceptions to reviewability. (a) The agency head, upon its own motion may, and upon petition by any party or when required by law shall, review an initial order, except to the extent that:

(1) A provision of law precludes or limits state agency review of the initial order; or

(2) the agency head (A) determines to review some but not all issues, or not to exercise any review, (B) delegates its authority to review the initial order to one or more persons, unless such delegation is expressly prohibited by law, or (C) authorizes one or more persons to review the initial order, subject to further review by the agency head.

(b) A petition for review of an initial order must be filed with the agency head, or with any person designated for this purpose by rule and regulation of the state agency, within 15 days after service of the initial order. If the agency head on its own motion decides to review an initial order, the agency head shall give written notice of its intention to review the initial order within 15 days after its service. If the agency head determines not to review an initial order in response to a petition for review, the agency head shall, within 20 days after filing of the petition for review, serve on each party an order stating that review will not be exercised.

(c) The petition for review shall state its basis. If the agency head on its own motion gives notice of its intent to review an initial order, the agency head shall identify the issues that it intends to review.

(d) In reviewing an initial order, the agency head or designee shall exercise all the decision-making power that the agency head or designee would have had to render a final order had the agency head or designee presided over the hearing, except to the extent that the issues subject to review are limited by a provision of law or by the agency head or designee upon notice to all parties.

(e) The agency head or designee shall afford each party an opportunity to present briefs and may afford each party an opportunity to present oral argument.

(f) The agency head or designee shall render a final order disposing of the proceeding or remand the matter for further proceedings with instructions to the person who rendered the initial order. Upon remanding a matter, the agency head or designee may order such temporary relief as is authorized and appropriate.

(g) A final order or an order remanding the matter for further proceedings shall be rendered in writing and served within 30 days after receipt of briefs and oral argument unless that period is waived or extended with the written consent of all parties or for good cause shown.

(h) A final order or an order remanding the matter for further proceedings under this section shall identify any difference between this order and the initial order and shall state the facts of record which support any difference in findings of fact, state the source of law which supports any difference in legal conclusions, and state the policy reasons which support any difference in the exercise of discretion. A final order under this section shall include, or incorporate by express reference to the initial order, all the matters required by subsection (c) of K.S.A. 77-526, and amendments thereto.

(i) The agency head shall cause copies of the final order or order remanding the matter for further proceedings to be served on each party in the manner prescribed by K.S.A. 77-531, and amendments thereto.

(j) Unless a petition for reconsideration is a prerequisite for seeking judicial review, a final order under this section shall state the agency officer to receive service of a petition for judicial review on behalf of the agency.

History: L. 1984, ch. 313, § 27; L. 1988, ch. 356, § 14; L. 1995, ch. 175, § 6; L. 1997, ch. 182, § 94; July 1, 1998.

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KANSAS MEDICAID STATE PLAN

Attachment 4.19-D

Part 1

77-529 STATUTES; ADMIN. RULES AND REGULATIONS; PROCEDURE 1998 Supp. Subpart R

Exhibit R-1

Page 23

77-529. Reconsideration. (a) (1) Except as otherwise provided by paragraph (2), any party, within 15 days after service of a final order, may file a petition for reconsideration with the agency head, stating the specific grounds upon which relief is requested. The filing of the petition is not a prerequisite for seeking administrative or judicial review except as provided in K.S.A. 44-1010 and 44-1115, and amendments thereto, concerning orders of the Kansas human rights commission, K.S.A. 55-606 and 66-118b, and amendments thereto, concerning orders of the corporation commission and K.S.A. 74-2426, and amendments thereto, concerning orders of the board of tax appeals.

(2) Any party applying for an exemption under: (A) Section 13, of article 11 of the Kansas Constitution, or (B) K.S.A. 79-201a *Second*, and amendments thereto, for property constructed or purchased, in whole or in part, with the proceeds of revenue bonds under the authority of K.S.A. 12-1740 to 12-1749, inclusive, and amendments thereto, may file a petition for reconsideration with the state board of tax appeals within 30 days after service of a final order.

(b) Within 20 days after the filing of the petition, the agency head shall render a written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further proceedings. The petition may be granted, in whole or in part, only if the agency head states, in the written order, findings of fact, conclusions of law and policy reasons for the decision if it is an exercise of the state agency's discretion, to justify the order. In proceedings before the Kansas corporation commission, the petition is deemed to have been denied if the agency head does not dispose of it within 30 days after the filing of the petition.

An order under this section shall be served on the parties in the manner prescribed by K.S.A. 77-531 and amendments thereto.

(c) Any order rendered upon reconsideration or any order denying a petition for reconsideration shall state the agency officer to receive service of a petition for judicial review on behalf of the agency.

(d) For the purposes of this section, "agency head" shall include a presiding officer designated in accordance with subsection (g) of K.S.A. 77-529, and amendments thereto.

History: L. 1984, ch. 313, § 29; L. 1988, ch. 356, § 15; L. 1991, ch. 148, § 11; L. 1995, ch. 175, § 7; L. 1997, ch. 132, § 4; L. 1998, ch. 146, § 4; July 1.

CASE ANNOTATIONS

7. Supplemental issues in appellants' petition for reconsideration, with one exception, raised with sufficient specificity to meet statutory requirements. *Citizens' Utility Ratepayer Bd. v. Kansas Corporation Comm'n*, 24 K.A.2d 222, 227, 943 P.2d 494 (1997).

Article 6.—ACT FOR JUDICIAL REVIEW AND CIVIL ENFORCEMENT OF AGENCY ACTIONS

77-601.

Attorney General's Opinions:

Administrative procedures; separation of powers doctrine considered. 97-39.

CASE ANNOTATIONS

45. BOTA members replaced; previous order reversed on reconsideration upholding sales tax assessment; judicial deference due decision considered. *In re Tax Appeal of Atchison Cablevision*, 262 K. 223, 225, 936 P.2d 721 (1997).

46. Tariff properly construed in case alleging discrimination in failure to disclose and apply tariff to plaintiff manufacturer. *Grindsted Products, Inc. v. Kansas Corporation Comm'n*, 262 K. 294, 302, 937 P.2d 1 (1997).

77-603.

CASE ANNOTATIONS

12. When prison disciplinary proceedings subject to judicial review examined. *Anderson v. McKune*, 23 K.A.2d 803, 809, 937 P.2d 16 (1997).

77-618.

CASE ANNOTATIONS

10. Trial court did not err by considering affidavit not admitted during administrative hearing. *Zorn v. Kansas Dept. of Revenue*, 24 K.A.2d 749, 750, 953 P.2d 1053 (1998).

77-621.

CASE ANNOTATIONS

62. BOTA members replaced; previous order reversed on reconsideration upholding sales tax assessment; judicial deference due decision considered. *In re Tax Appeal of Atchison Cablevision*, 262 K. 223, 225, 936 P.2d 721 (1997).

63. Tariff properly construed in case alleging discrimination in failure to disclose and apply tariff to plaintiff manufacturer. *Grindsted Products, Inc. v. Kansas Corporation Comm'n*, 262 K. 294, 302, 937 P.2d 1 (1997).

64. Board's denial of application for reinstatement of license to practice medicine affirmed. *Vakas v. Kansas Bd. of Healing Arts*, 262 K. 889, 892, 941 P.2d 381 (1997).

65. Workers compensation board's finding reviewed for substantial competent evidence; uncontradicted evidence should generally be regarded as conclusive. *Nance v. Harvey County*, 23 K.A.2d 899, 901, 931 P.2d 1245 (1997).

66. A negative finding of fact is not appealable unless bias, passion or prejudice is found. *Nance v. Harvey County*, 263 K. 542, 551, 952 P.2d 411 (1997).

KANSAS MEDICAID STATE PLAN

Attachment 4.19-D

Part I
Subpart R
Exhibit R-2
Page 1

30-7-64

30-7-64. Definitions. (a) "Appellant" means an individual or entity that has requested a fair hearing from an agency decision affecting the individual or entity.

(b) "Applicant" means an individual who has applied for or requested assistance or benefits from a program administered by the agency.

(c) "Recipient" means an individual who is receiving assistance or benefits from a program administered by the agency. The effective date of this regulation shall be July 1, 1989. (Authorized by K.S.A. 75-3304; implementing K.S.A. 75-3306, as amended by L. 1983, Ch. 356, Sec. 302; effective July 1, 1989.)

30-7-65 (1)

30-7-65. Notice to recipients of intended action. (a) (1)
"Adequate notice" means a written notice that includes a statement of what action the agency intends to take, the reasons for the intended agency action, the specific policies supporting the action, explanation of the individual's right to request a fair hearing, and the circumstances under which assistance is continued if a hearing is requested.

(2) "Timely" means that the notice is mailed at least 10 days, including Saturdays, Sundays and legal holidays, before the date upon which the action would become effective.

(b) When the agency intends to take action to discontinue, terminate, suspend, or reduce assistance, timely and adequate notice shall be given by the agency, except as set forth in subsection (c) of this regulation.

(c) Under the following circumstances, timely notice shall not be required, but an adequate notice shall be sent by the agency not later than the date of action :

(1) when the agency has factual information confirming the death of a recipient or of the ADC payee and there is no relative available to serve as a new payee;

(2) when the agency receives a clear written statement signed by a recipient that the recipient no longer wishes assistance or that gives information which requires termination or reduction of assistance, and the recipient has indicated, in writing, an understanding that termination or reduction of assistance will be